IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

WP(C).No. 11420 of 2004(H)

PETITIONER:

K.K.SUBRAMANYAN, S/O. KUMARAN,
KANNATTUPADATH HOUSE, CHITTATTUKARA, PATTANAM,
VADAKKEKARA VILLAGE, N.PARUR.

BY ADV. SRI.VIJAYAN MANALY
SRI.G.PADMAKUMAR

RESPONDENTS:
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1. **STATE OF KERALA,**
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.

2. **THE TAHSILDAR,**
PARUR TALUK, TALUK OFFICE, N.PARUR.

3. **THE DEPUTY TAHSILDAR (REVENUE RECOVERY),**
TALUK OFFICE, N.PARUR.

BY GOVERNMENT PLEADER SMT.SMITHA SUKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF CERTIFICATE ISSUED FROM THE SECRETARY, CHITTATTUKARA GRAMA PANCHAYAT.

EXT.P2: COPY OF THE SKETCH WITH AREA CALCULATION PREPARED BY APPROVED VALUER AND LICENSED PWD(RETD.) ENGINEER.

EXT.P3: COPY OF ASSESSMENT ORDER OF THE 2ND RESPONDENT DTD. 22.5.02.

EXT.P4: COPY OF ORDER OF THE 2ND RESPONDENT DTD 10.6.2003.

EXT.P5: COPY OF ORDER OF THE DISTRICT COLLECTOR, ERNAKULAM NO.DIS.41336/03-810 DTD 2.1.2004.

EXT.P6: COPY OF ATTACHMENT NOTICE OF THE 3RD RESPONDENT DTD 24.3.2004.

RESPONDENTS EXHIBITS:

EXT.R2(A): COPY OF THE RETURN FILED BY THE PETITIONER.

TRUE COPY

P.A.TO JUDGE

THOTTATHIL B.RADHAKRISHNAN,J

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W.P.(C).No.11420 of 2004

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Dated this the 11th day of July, 2007

JUDGMENT

The issue arising for a decision is as to whether the petitioner is liable to pay luxury tax under the Kerala Building Tax Act, 1975 for the building in question. To decide this issue, the plinth area of building has to be calculated without including the plinth area of the garage portion. While the counter affidavit disclose certain measurements, those details are not available from the impugned order. Following a first order of remand issued by the District Collector, the plinth area of the building which was originally determined as 300.4m^2 was reduced to 294.68m^2 . If the case of the petitioner is that the garage has a plinth area of 17.03m^2 is accepted and deduction made accordingly, the assessable plinth area will be only 277.65m^2, which would less than the bench mark of 278.7 m^2 for imposing luxury tax. However in the absence of data in the statutory orders, I do not venture to proceed on the merits and decide the matter finally on the basis of contesting contentions as to the plinths. Hence, the impugned orders, in so far as they imposes

luxury tax, is set aside and the Tahasildar is directed to re-measure the building to determine the plinth area excluding the garage area and issue assessment orders afresh, as regards luxury tax. If the Tahasildar takes the view that luxury tax is payable, the order shall contain the reasons and the determined plinth area of the entire building including the garage area and also the separate measurement of the plinth area of the garage. Any payment made by the petitioner in obedience to the interim order in this case shall be dealt with either by making refund or by adjustment, as the case may be, in terms of such decision. Let the aforesaid be done within a period of four months from the date of receipt of a copy of this judgment and compliance promptly reported by the Tahasildar to the Registrar General of this Court.

Writ petition is allowed as above.

THOTTATHIL B.RADHAKRISHNAN, JUDGE

dvs